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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 ERNEST GLENN VICK,
12 Petitioner,

No. CIV-S-02-0652 MCE/JFM P

13 v.

ORDER

14 D. RUNNELS, Warden,
15 Respondent.
16 _____/

17 Petitioner, a state prisoner proceeding pro se, has timely
18 filed a notice of appeal of this court's July 21, 2005 denial of
19 his application for a writ of habeas corpus. Before petitioner
20 can appeal this decision, a certificate of appealability must
21 issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

22 A certificate of appealability may issue under 28 U.S.C.
23 § 2253 "only if the applicant has made a substantial showing of
24 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).
25 The certificate of appealability must "indicate which specific
26 issue or issues satisfy" the requirement.

1 28 U.S.C. § 2253(c) (3) .

2 A certificate of appealability should be granted for any
3 issue that petitioner can demonstrate is "'debatable among
4 jurists of reason,'" could be resolved differently by a different
5 court, or is "'adequate to deserve encouragement to proceed
6 further.'" Jennings v. Woodford, 290 F.3d 1006, 1010 (9th Cir.
7 2002) (quoting Barefoot v. Estelle, 463 U.S. 880, 893 (1983)).¹

8 Petitioner has made a substantial showing of the denial of a
9 constitutional right in the following issues presented in the
10 instant petition: whether trial counsel's decision to call a
11 psychologist to testify to lack of propensity, failure to ask for
12 a limiting instruction concerning the use of testimony from the
13 psychologist's cross-examination, and failure to object to
14 testimony concerning post-molestation experiences of a prior
15 victim demonstrated ineffective assistance of counsel; whether
16 denial of petitioner's motion for new trial violated due process;
17 and whether the refusal to strike one of petitioner's prior
18 convictions for sentencing resulted in the imposition of cruel
19 and unusual punishment.

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24 ¹ Except for the requirement that appealable issues be
25 specifically identified, the standard for issuance of a
26 certificate of appealability is the same as the standard that
applied to issuance of a certificate of probable cause.
Jennings, at 1010.

1 Accordingly, IT IS HEREBY ORDERED that a certificate of
2 appealability is issued in the present action.

3 DATED: August 18, 2005

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MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE